

BELCO PETROLEUM CORP.

IBLA 79-40

Decision August 16, 1979

Appeal from a decision of the Acting Director, U.S. Geological Survey, affirming the Area Oil and Gas Supervisor's refusal to approve an application to drill for oil and gas in a potash enclave within a designated Potash Area. GS 112 O & G.

Affirmed.

1. Applications and Entries – Minerals Exploration – Multiple Mineral Development Act – Oil and Gas Leases: Drilling

An application for permit to drill for oil and gas in a designated Potash Area is properly denied where the applicant fails to show that his application comes within either of the two exceptions to the policy in favor of potash development enunciated in an Order of the Secretary, dated Oct. 7, 1975, 40 FR 51486.

APPEARANCES: James Patrick Miller, Esq., Belco Petroleum Corp., Houston, Texas, for appellant; Robert G. Berger, Esq., Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for U.S. Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Belco Petroleum Corporation (Belco) appeals from a decision of the Acting Director, U.S. Geological Survey (USGS), dated September 21, 1978, affirming the Area Oil and Gas Supervisor's refusal to approve an application for permit to drill. The refusal at issue involved Belco's application to drill the Bass Federal Well No. 3 in sec. 19, T. 20 S., R. 33 E., New Mexico principal meridian, on Federal lease NM 03023-A.

By decision of May 20, 1977, the Area Oil and Gas Supervisor informed Belco that its application was denied because "the drilling of an oil or gas well at the above-described surface location would result in undue waste of commercial potash deposits." The Supervisor also alluded to an arbitration meeting with Belco and Kerr-McGee Corp., an applicant for a potash lease in the same area, during which the Supervisor indicated that "USGS would favorably consider an application to drill an oil and gas well at a surface location which would twin the Belco No. 1 Bass Federal in the SE 1/4 NW 1/4 sec. 30, T. 20 S., R. 33 E.; such well to be directionally drilled from a point below the salt to bottom at the proposed location for your Bass Federal No. 3 in Section 19. The waste of commercial potash deposits caused by a well drilled directionally as described above would be minimal."

Belco appealed this decision to the Director, U.S. Geological Survey, on June 13, 1977. In his decision of September 21, 1978, the (Acting) Director affirmed the decision of the Area Supervisor. The basis of the Director's decision was an order signed by Acting Secretary of the Interior, Kent Frizzell, dated October 7, 1975, 40 FR 51486. The lands involved in Belco's application lie within an area designated a "Potash Area" by this same order. The order states in part:

It will be departmental policy to deny approval of most applications for permits to drill oil and gas tests from surface locations within the potash enclave Two exceptions to this policy will be permitted under the following conditions:

- a. Drilling of vertical or directional holes will be allowed to take place from barren areas within the potash enclaves when the Area Mining Supervisor determines that such operations will not adversely affect active or planned mining operations in the immediate vicinity of the proposed drillsite.
- b. Drilling of vertical or directional holes will be permitted to take place from a drilling island located within a potash enclave when: (1) there are no barren areas within the enclave or drilling is not permitted on the established barren area(s) within the enclave because of interference with mining operations; (2) the objective oil and gas formation beneath the lease cannot be reached by a well which is vertically or directionally drilled from any permitted location within the barren area(s); or, (3) in the opinion of the Area Oil and Gas Supervisor, the target formation beneath a remote interior lease cannot be reached by a well directionally drilled from a surface location outside the potash enclave. Under these circumstances, the Area Mining Supervisor will, in consultation with the Area Oil and

Gas Supervisor, establish an island within the potash enclave from which the drilling of that well and subsequent wells will be permitted. The Area Mining Supervisor in establishing any such island will, consistent with the data supplied by the Area Oil and Gas Supervisor regarding present directional drilling capabilities, select a site which will minimize the loss of potash ore. No island will be established within one mile of any area where approved mining operations will be conducted within three years. To assist the Area Mining Supervisor in this regard, he may require affected potash mining operators to furnish a three-year mining plan.

Although the Area Oil and Gas Supervisor made no findings as to whether Belco came under either of the above exceptions, the Director specifically found that Belco was covered by neither exception. Indeed, the decision of the Area Oil and Gas Supervisor of May 20, 1977, did not make reference to the order of October 7, 1975. Whatever deficiencies may have been present in the Supervisor's decision have been corrected by the Director's decision. It is the Director's decision which this Board is authorized to review. 30 CFR 290.7 (1978).

In its statement of reasons before the Board, Belco does not dispute the Director's findings that it (Belco) did not qualify for either of the two exceptions set forth in the order. Instead, Belco continues to focus upon the holding of the Area Oil and Gas Supervisor that drilling would cause undue waste of commercial potash deposits. While prevention of undue waste of potash is consistent with the policies set forth in the order, 1/ the grant or denial of an application for permit to drill is governed by the clear terms of the order. Belco makes the following points:

1. At the time of Belco's application, there was no potash lease covering the subject lands. Hence the Supervisor's refusal was based on the twin supposition that a potash lease would issue in the future and that undue waste would be caused to such lease by Belco's

1/ As a condition to the issuance of a lease, each successful applicant for a noncompetitive oil and gas lease and any party awarded a competitive lease for lands in the designated Potash Area will be required to execute a stipulation to the lease, stating:

"2. No wells will be drilled for oil or gas at a location which, in the opinion of the Area Oil and Gas Supervisor, would result in undue waste of potash deposits or constitute a hazard to or unduly interfere with mining operations being conducted for the extraction of potash deposits."

drilling. Such refusal was unreasonable, arbitrary, and an abuse of discretion.

2. The Order of October 7, 1975, requires all mining and exploratory operations for potash be conducted in such a way that they will not be a hazard to oil or gas production or will not unreasonably interfere with the orderly development and production under any oil and gas lease issued for the same land.

We will address each point in order.

The order of October 7, 1975, and its predecessors ^{2/} reveal the Department's efforts to accommodate oil and gas drilling operations on lands which have been designated a Potash Area. The language in the Order discloses a decided preference for potash operations: "It will be departmental policy to deny approval of most applications for permits to drill oil and gas tests from surface locations within the potash enclaves" Enclaves are those presently unmined areas which are considered to contain a minable reserve in one or more ore zones, *i.e.*, those areas where potash ore is known to exist in sufficient thickness and quality to be minable under present-day technology and economics. 40 FR 51487. The fact that an area is presently unmined does not deny it the preference accorded active mines.

Belco claims that the subject lands were not only unmined at the time of the Area Oil and Gas Supervisor's denial, but were also not subject to a potash lease at that time. The record reveals, however, that an application for a competitive potash lease had been submitted prior to the Supervisor's decision and that the applicant, Kerr-McGee Corp., strongly opposed Belco's proposed drilling. The record further reveals statements by the Area Geologist, Southern Rocky Mountain Area, dated May 20, 1977, and by the Area Mining Supervisor, SRMA, dated September 19, 1977, which support a finding that potash reserves in the amount of 3.76 million tons exist in the proposed drilling area in minable thickness and grade. We hold, in light of this Department's preference for potash development in a designated Potash Area, that the Director's decision properly followed the Secretarial order and, therefore, was neither unreasonable, arbitrary, nor an abuse of discretion. While the formulation of Departmental policy is properly the domain of the Secretary, it is the function of this Board to review decisions of Geological Survey and the Bureau of Land Management for

^{2/} The present order is substantially similar to an order of the Secretary of the Interior, dated May 11, 1965, 30 FR 6692-93. This prior order is subject to the provisions of an order of the Secretary, dated October 16, 1951, 16 FR 10669, and an order of the Secretary dated February 6, 1939, 4 FR 1012.

their compliance with such policies. Woods Petroleum Corp., 12 IBLA 247 (1973).

Belco's second argument on appeal calls our attention to a paragraph in the order of October 7, 1975, forbidding potash mining or exploratory operations, which in the opinion of the Area Mining Supervisor, would constitute a hazard to oil or gas production or would unreasonably interfere with orderly development and production under any oil and gas lease issued for the same land. ^{3/} The decisions of both the Area Oil and Gas Supervisor and the Director acknowledge that "USGS would favorably consider an application to drill an oil and gas well at a surface location which would twin the Belco No. 1 Bass Federal . . .; such well to be directionally drilled" This option has been at least implicitly rejected by Belco by the filing of this appeal. Belco has not presented any facts which would show that the target formation could not be reached by a well directionally drilled from the area proposed by USGS or that the cost of such directional drilling would not be economically feasible. Thus, it cannot be said that the potential potash production has unreasonably interfered with Belco's operations.

Further issues raised by Belco's statement of reasons are irrelevant to the Director's decision to affirm the Supervisor's refusal of Belco's application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge

^{3/} See note 1, supra, for a similar expression in favor of potash mining.

